

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

IN ADMIRALTY

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NEW ENGLAND BOATWORKS, INC. and  
SHM NEB, LLC d/b/a SAFE HARBOR NEW  
ENGLAND BOATWORKS

C.A. No.: 1:20-cv-00189-MSM-PAS

Plaintiffs,

-against-

AURORA, a 2008 67-foot Uniesse Marine SRL  
motor yacht (Official # 1209706), its engines,  
generators, electronics, tackle, tender,  
furnishings, contents, storage containers,  
bunkers, appurtenances, etc., in rem;  
YACHTING REVOLUTION, LTD., in  
personam; and MARC TRACHTENBERG, in  
personam,

Defendants.

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M & T BANK

Intervenor.

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**ANSWER TO DEFENDANTS' AMENDED COUNTERCLAIM BY  
NEW ENGLAND BOATWORKS, INC. WITH AFFIRMATIVE DEFENSES**

Plaintiff/Intervenor Defendant New England Boatworks, Inc. as and for an  
Answer to the Defendants' Amended Counterclaim [Dkt. 47] alleges upon information  
and belief as follows:

1. Denies the allegations contained in Paragraph 1 of the Amended  
Counterclaim as they require New England Boatworks, Inc. to plead a legal conclusion.
2. Admits that Yachting Revolution Ltd. is identified as the owner on the Rhode

Island registration for the Vessel and is identified on the Vessel's Abstract of Title, but except as so specifically admitted, denies knowledge or information sufficient to respond to the allegations of Paragraph 2 of the Amended Counterclaim such that New England Boatworks, Inc. denies them.

3. Denies knowledge or information sufficient to respond to the allegations of Paragraph 3 of the Amended Counterclaim such that New England Boatworks, Inc. denies the same.

4. Admits the allegations contained in Paragraph 4 of the Amended Counterclaim.

5. Denies the allegations of Paragraph 5 of the Amended Counterclaim.

6. Admits New England Boatworks, Inc. moved the Defendant Vessel into a shed, but except as so specifically admitted denies the remaining allegations of Paragraph 6 of the Amended Counterclaim.

7. Admits that New England Boatworks, Inc. regularly issued invoices for supplies and services it provided to the Defendant Vessel including for storage, but except as so specifically admitted, denies the remaining allegations of Paragraph 7 of the Amended Counterclaim.

8. Denies the allegations of Paragraph 8 of the Amended Counterclaim.

9. Admits New England Boatworks, Inc. possessed the expertise and did provide supplies and services to the Defendant Vessel in a workmanlike and high quality manner, but except as so specifically admitted denies the remaining allegations of Paragraph 9 of the Amended Counterclaim.

10. Denies the allegations of Paragraph 10 of the Amended Counterclaim.

11. Denies the allegations of Paragraph 11 of the Amended Counterclaim.

12. Admits New England Boatworks, Inc. regularly issued invoices for the supplies and services it provided to the Vessel which invoices included details of the charges, but except as so specifically admitted denies the remaining allegations of Paragraph 12 of the Amended Counterclaim.

13. New England Boatworks, Inc. responds to the allegations of Paragraph 13 of the Amended Counterclaim reasserting its answers to the prior paragraphs in the same manner as pleaded herein.

14. Denies the allegations of Paragraph 14 of the Amended Counterclaim.

15. Denies the allegations of Paragraph 15 of the Amended Counterclaim.

16. New England Boatworks, Inc. responds to the allegations of Paragraph 16 of the Amended Counterclaim reasserting its answers to the prior paragraphs in the same manner as pleaded herein.

17. Admits New England Boatworks, Inc. provided supplies and services to the Defendant Vessel in a diligent and workmanlike manner but denies having specifically contracted to so perform and denies the remaining allegations of Paragraph 17.

18. Denies the allegations of Paragraph 18 of the Amended Counterclaim.

19. Denies the allegations of Paragraph 19 of the Amended Counterclaim.

20. Denies the allegations of Paragraph 20 of the Amended Counterclaim.

21. New England Boatworks, Inc. responds to the allegations of Paragraph 21 of the Amended Counterclaim reasserting its answers to the prior paragraphs in the same manner as pleaded herein.

22. Denies the allegations of Paragraph 22 of the Amended Counterclaim.

23. New England Boatworks, Inc. denies knowledge or information sufficient to respond to the allegations of Paragraph 23 of the Amended Counterclaim such that it denies them.

24. Denies the allegations of Paragraph 24 of the Amended Counterclaim.

25. Denies the allegations of Paragraph 25 of the Amended Counterclaim.

26. Denies the allegations of Paragraph 26 of the Amended Counterclaim.

27. New England Boatworks, Inc. responds to the allegations of Paragraph 27 of the Amended Counterclaim reasserting its answers to the prior paragraphs in the same manner as pleaded herein.

28. Denies the allegations of Paragraph 28 of the Amended Counterclaim.

29. Denies the allegations of Paragraph 29 of the Amended Counterclaim.

30. Denies the allegations of Paragraph 30 of the Amended Counterclaim.

31. Denies the allegations of Paragraph 31 of the Amended Counterclaim.

32. Denies the allegations of Paragraph 32 of the Amended Counterclaim.

33. New England Boatworks, Inc. responds to the allegations of Paragraph 33 of the Amended Counterclaim reasserting its answers to the prior paragraphs in the same manner as pleaded herein.

34. Denies the allegations of Paragraph 34 of the Amended Counterclaim.

35. Denies the allegations of Paragraph 35 of the Amended Counterclaim.

36. New England Boatworks, Inc. responds to the allegations of Paragraph 36 of the Amended Counterclaim reasserting its answers to the prior paragraphs in the same manner as pleaded herein.

37. Denies the allegations of Paragraph 37 of the Amended Counterclaim.
38. Denies the allegations of Paragraph 38 of the Amended Counterclaim.
39. Denies the allegations of Paragraph 39 of the Amended Counterclaim.
40. Denies the allegations of Paragraph 40 of the Amended Counterclaim.
41. Denies the allegations of Paragraph 41 of the Amended Counterclaim.
42. New England Boatworks, Inc. responds to the allegations of Paragraph 42 of the Amended Counterclaim reasserting its answers to the prior paragraphs in the same manner as pleaded herein.
43. Denies the allegations of Paragraph 43 of the Amended Counterclaim.
44. Denies the allegations of Paragraph 44 of the Amended Counterclaim.
45. Denies the allegations of Paragraph 45 of the Amended Counterclaim.
46. Denies the allegations contained in the "WHEREFORE" clauses of the Amended Counterclaim.

**AS AND FOR AFFIRMATIVE DEFENSES TO THE  
AMENDED COUNTERCLAIM**

Further answering the Amended Counterclaim and for separate, partial or complete defenses thereto, New England Boatworks, Inc. alleges upon information and belief as follows:

**FIRST AFFIRMATIVE DEFENSE**

The Amended Counterclaim fails to state cause of action and/or fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

If the Counterclaiming Defendants were damaged, which is denied, the cause of any damage was in whole or in part, their own negligence and without any fault on the

part of New England Boatworks, Inc. for which reason the Counterclaim is barred or limited.

### THIRD AFFIRMATIVE DEFENSE

It the Counterclaiming Defendants were damaged, which is denied, the responsibility for this damage lies with person(s) or entity(ies) for whose conduct New England Boatworks, Inc. is not responsible.

### FOURTH AFFIRMATIVE DEFENSE

If the Defendant Vessel was damaged, which is denied, said damage was caused in whole or in part by the contributory negligence of the Counterclaiming Defendants.

### FIFTH AFFIRMATIVE DEFENSE

Any obligations that New England Boatworks, Inc. might have had to the Counterclaiming Defendants was discharged and extinguished by their conduct such that New England Boatworks, Inc. owes nothing to the Counterclaiming Defendants.

### SIXTH AFFIRMATIVE DEFENSE

The Counterclaiming Defendants have failed to mitigate their damages (which are denied) such that the Counterclaim is barred or limited.

### SEVENTH AFFIRMATIVE DEFENSE

The economic loss rule bars or limits the Counterclaiming Defendants from any recovery.

### EIGHTH AFFIRMATIVE DEFENSE

New England Boatworks, Inc. has a lawful maritime lien against the Defendant Vessel, et al., in rem, pursuant to, inter alia, the Federal Maritime Lien Act, 46 U.S.C. §

31341, et seq., on account of the supplies and services (including storage services) it provided to the Defendant Vessel.

#### NINTH AFFIRMATIVE DEFENSE

Yachting Revolution, Ltd. has ceased to exist for approximately ten years such that it has no right, title, claim and/or interest in the Vessel nor any standing to assert its Amended Counterclaim.

#### TENTH AFFIRMATIVE DEFENSE

The Amended Counterclaim is barred and/or reduced by the doctrines of laches and/or unclean hands and/or waiver and/or acquiescence and/or estoppel.

#### ELEVENTH AFFIRMATIVE DEFENSE

Some or all of the damages alleged in the Amended Counterclaim (which are denied) were caused by the willful, continuing and wrongful refusal of Counterclaiming Defendants to pay for the supplies and services provided by New England Boatworks, Inc.

#### TWELFTH AFFIRMATIVE DEFENSE

None of the losses, events or damages alleged in the Amended Counterclaim (which are denied), were caused in whole or in part by any promise, representation, warranty or guarantee on the part of New England Boatworks, Inc. or by any breach thereof.

#### THIRTEENTH AFFIRMATIVE DEFENSE

New England Boatworks, Inc. denies liability for any conduct of any nature whatsoever which would entitle the Counterclaiming Defendants to damages in any

amount whatsoever or other relief prayed for as against New England Boatworks, Inc. and/or for compensation and/or for setoff.

FOURTEENTH AFFIRMATIVE DEFENSE

The Amended Counterclaim is barred by the statute of limitations.

FIFTEENTH AFFIRMATIVE DEFENSE

The Amended Counterclaim is not verified.

WHEREFORE Plaintiff/Intervenor Defendant New England Boatworks, Inc. respectfully requests that its Answer and its Affirmative Defenses to the Amended Counterclaim be deemed good and sufficient; that judgment be entered in favor of New England Boatworks, Inc. against Defendants Marc Trachtenberg and Yachting Revolution, Ltd., jointly and severally, awarding it the relief it seeks in its Verified Complaint; dismissing with prejudice the Amended Counterclaim and awarding it interest and attorneys' fees and costs, and granting such other, further and/or additional relief as is deemed just and equitable.

// Signature Page Follows //



Dated: Newport, Rhode Island  
September 29, 2020

Respectfully submitted,

New England Boatworks, Inc.

By their attorneys,

Fulweiler llc

/s/ John K. Fulweiler

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*Attorneys for Plaintiffs*  
*Attorneys for Intervenor Defendants*

#### CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2020, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing(s) to all the registered participants. Service on all counsel of record has been made by electronic means.

/s/ John K. Fulweiler

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John K. Fulweiler, Esq.